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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,649	12/11/2003	Andrew Christopher Wright	DSGI-1000US0	2170
23770	7590	01/27/2006	EXAMINER	
PAULA D. MORRIS MORRIS & AMATONG, P.C. 10260 WESTHEIMER, SUITE 360 HOUSTON, TX 77042-3110			BOGART, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/733,649	Applicant(s) WRIGHT ET AL.	
	Examiner Michael G. Bogart	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 34-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-6</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 1-12, drawn to an elastic composite, classified in class 87, subclass 2.
- II. Claims 13-33, drawn to an absorbent garment having elastic waist tabs, classified in class 604, subclass 386.
- III. Claims 34-48, drawn to an absorbent garment having an elastic center portion, classified in class 604, subclass 385.01.

Inventions I, II and III are related as combination (II or III) and subcombination (I).

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (II or III) as claimed does not require the particulars of the subcombination (I) as claimed because it can be made with a materially different elastic element. The subcombination (I) has separate utility such as it may be used in non-absorbent articles, belts, etc.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as an absorbent article that does not have the central elastic element. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Alberto Amatong on 19 January 2006 a provisional election was made with traverse to prosecute the invention of II, claims 13-33. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-12 and 34-48 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement (IDS)

An IDS and non-patent literature document were received in the application file on 03 November 2005 that appear to belong to a different application. They have not been considered. See PAIR referenced in the conclusion of this Office action, below.

Claim Objections

Claims 18, 21, 22 and 25 are objected to because of the following informalities:

Claim 18 recites the limitation "plurality of elastic strands" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "said elastic region" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "said first and second non-elasticized regions" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 22 recites the limitation "said first and second elasticized regions" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 25 recites the limitation "bank" in line 2. It appears from the context of the claims that --band-- should replace this term.

Appropriate correction is required.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

Art Unit: 3761

invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 13-15, 17-24 and 28-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Toyoda *et al.* (US 5,916,207 A; hereinafter “Toyoda”) in view of Guevara *et al.* (US 6,086,571 A; hereinafter “Guevara”).

Regarding claim 13 Toyoda teaches a disposable absorbent garment (1) comprising:

a topsheet (2);

a backsheet (3);

an absorbent core (4) disposed between said topsheet (2) and said backsheet (3) such that a longitudinal centerline of said garment (1) extends through said topsheet (2), said backsheet (3), and said absorbent core (4), wherein said topsheet (2), said backsheet (3) and said absorbent core (4) provide a central body of said disposable absorbent garment (1); and

an elastic composite band (10) attached to said central body, said elastic composite band (10) having a first side edge, a second side edge, and a composite centerline extending in a direction between, and in generally parallel relation with, said side edges, said elastic composite band (10) including a base layer (a) and an elastic construction (b) disposed on the base layer and spaced inwardly from each said side edge; and

wherein said elastic construction (b) includes a plurality of spaced apart elastic elements (b) distributed in a direction extending between said side edges, each said elastic element (b) being aligned in generally perpendicular relation with said composite centerline.

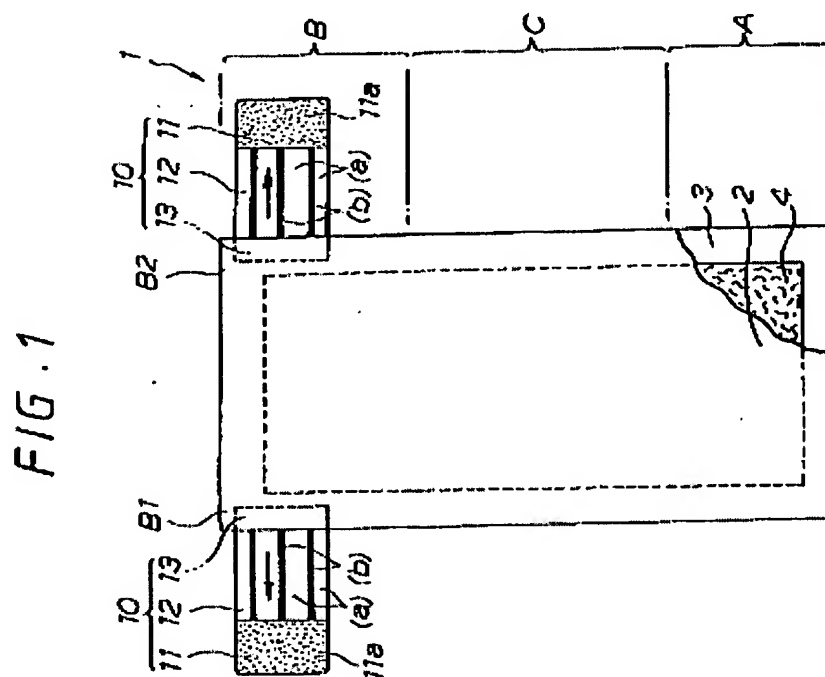
Toyoda does not teach that the elastic is sandwiched between two layers as laminate.

Art Unit: 3761

Guevara teaches an absorbent article having elastic tape members (38, 40) that include elastic (80) sandwiched between two outer layers. This makes the elastic belt soft to the touch. (col. 9, line 64-col. 10, line 42)(see fig. 1, below).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the additional second layer of Guevara over the elastic member of Toyoda in order to provide an elastic belt that is soft to the touch on both sides and stronger than a single layer construction.

Regarding claim 14, Toyoda teaches a elastic band (10) that includes an elasticized region (12) positioned between said first and second side edges, said elastic construction (b) being disposed in said elasticized region (12), a first non-elasticized region (13) positioned between said first side edge and said elasticized region (12), and a second non-elasticized region (11) positioned between said second side edge and said elasticized region.



Art Unit: 3761

Regarding claim 15, Toyoda teaches an elasticized region (12) that is disposed generally centrally between said side edges.

Regarding claim 17, Toyoda teaches that said elastic elements (b) are elastic strands (b).

Regarding claim 18, Toyoda teaches that each of said plurality of elastic strands (b) is generally aligned in perpendicular relation with said side edges.

Regarding claim 19, Toyoda teaches that said elastic elements (b) are disposed in mutual generally parallel relation.

Regarding claim 22, Toyoda teaches that one of said first and second elasticized bands (10) is equipped with a fastening element (11a) selected from the group of fastening elements consisting of: adhesive elements and hook and landing elements (col. 3, lines 16-28). The instant invention in the figures and specification at paragraph 0042 discloses that the fastening element (124) is disposed on one of the outer non-elastic outer portions (124a, 124b) of the band, not the central “elastic region” (124c). The claims are interpreted herein as being consistent with the teaches of the specification and figures.

Regarding claims 23, 24 and 28, Toyoda teaches two elastic bands (10) disposed on at least one end edge (B) or on opposite sides (B1, B2) of an end edge (B) of an absorbent article (1)(fig. 1).

Regarding claim 29, Toyoda teaches an elasticized region (12) that is disposed generally centrally between said side edges.

Regarding claim 30, Toyoda teaches that the elastic elements (b) are equally spaced apart from one another.

Regarding claim 31, Toyoda teaches that said elastic elements (b) are disposed in mutual generally parallel relation.

Regarding claims 20, 21, 32 and 33, these claims include limitations concerning the machine direction of the elastic band and how it is formed, which makes these claims product-by-process claims. Product-by-process claims are not limited to the manipulations of the recited steps, only the limitations implied by the steps. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985)(citations omitted). MPEP § 2113. The finished band of Toyoda and Guevara meets all of the claimed structural limitations.

Claim 16 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Toyoda and Guevara as applied to claims 13-15, 17-24 and 28-33 above, and further in view of Gibbs (US 2003/0139725 A1).

Toyoda and Guevara do not teach a second elasticized region within the side edges of an elastic band.

Gibbs teaches an absorbent article having elastic waist tabs (32) which have elastic regions (110) separated by a relatively non-elastic region (132) between the side edges (130, 134). This structure prevents necking down and the associated buckling and bunching when the tab is stretched.

Art Unit: 3761

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the dead zone of Gibbs to bisect the elastic structure of the band of Toyoda and Guevara in order to prevent bunching and buckling of the tab when stretched.

Claims 25-27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Toyoda and Guevara as applied to claims 13-15, 17-24 and 28-33 above, and further in view of Jarpenberg *et al.* (US 2003/0144643 A1; hereinafter "Jarpenberg").

Toyoda and Guevara do not teach tabs at both ends or ear portions.

Jarpenberg teaches an absorbent article with ears and tabs at both the front and rear waist portions (see fig. 11, below).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the second set of tabs and/or the ear portions to facilitate fitting of the absorbent article on a wearer.

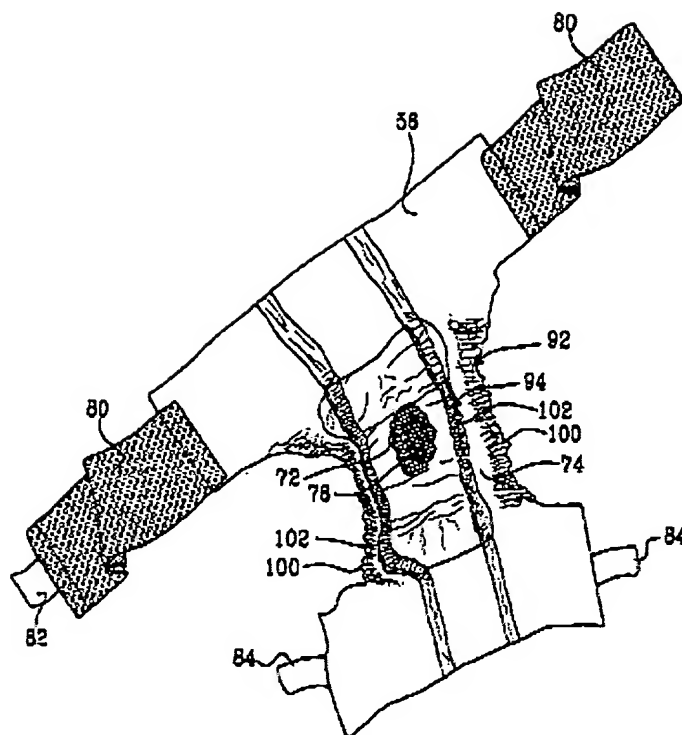


FIG. 11

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
20 January 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

